

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:06-HC-2209-FL

GERALD ADAMS,

Petitioner,

v.

NORA HUNT,

Respondent.

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ORDER

This matter came before the court on petitioner's request for a certificate of appealability (DE # 22), filed on September 5, 2007. The matter is ripe for adjudication.

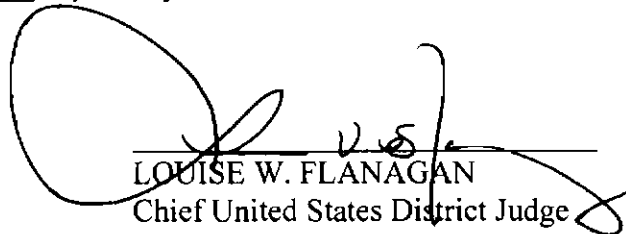
On November 29, 2006, petitioner filed a petition for writ of habeas corpus in this court under 28 U.S.C. § 2254. On August 30, 2007, respondent's motion for summary judgment was granted. Federal Rule of Appellate Procedure 22 provides in pertinent part that "[i]f an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue." Accordingly, the court shall determine whether petitioner is entitled to a certificate of appealability.

Petitioner must satisfy the provisions of 28 U.S.C. § 2253(c) before a certificate of appealability may issue. Section 2253 provides that a certificate of appealability may issue only if the applicant has made a "substantial showing" of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Petitioner is not required to show that he would prevail on the merits. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Rather, petitioner must demonstrate that reasonable jurists

would find that this court's "assessment of the constitutional claim was debatable or wrong." Id. However, where a petitioner's constitutional claims are dismissed on procedural grounds, a certificate of appealability should issue when the petitioner shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 529 U.S. at 484.

Petitioner has met none of the requirements for issuance of a certificate of appealability. This court's previous denial of petitioner's habeas corpus claim was proper. Moreover, the court's assessment of petitioner's constitutional claims and procedural rulings would not be debatable among reasonable jurists. Petitioner has thus failed to make a substantial showing of the denial of a federal constitutional right. Accordingly, his motion for a certificate of appealability (DE # 22) is DENIED.

SO ORDERED, this the 30th day of September, 2007.



LOUISE W. FLANAGAN
Chief United States District Judge